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## FISCAL IMPACT REPORT

**SPONSOR** Ferrary/Rubio/ Thomson **ORIGINAL DATE** 3/6/17 **LAST UPDATED** \_\_\_\_\_ **HM** 93

**SHORT TITLE** Employees with Disabilities Minimum Wage **SB** \_\_\_\_\_

**ANALYST** Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 327.

### SOURCES OF INFORMATION

LFC Files

No Responses Received

### SUMMARY

#### Synopsis of Memorial

House Memorial 93 asks the Developmental Disabilities Planning Council to convene a task force to study and make recommendations for the provision of minimum wage or better for all employees with disabilities. Currently, some employees with significant disabilities receive less than the minimum wage in three New Mexico non-profit agencies, based on federal 14c certificates. All others employing workers with disabilities pay the minimum wage or better.

The task force would review the positive and negative results that might come from a state-mandated policy that would require all employees to receive at least the minimum wage. Members of the task force would include, at a minimum, representatives from

- The Developmental Disabilities Planning Council
- National Federation for the Blind
- One of the three agencies currently using the 14c certificates to pay a subminimum wage to some employees
- Disability Rights New Mexico
- Adults with handicaps who now or previously have been paid less than the minimum wage, or a family member of such adults

The task force would be charged with reviewing federal and state law applying to this situation, as well as the experience of other states in either requiring minimum wage or allowing subminimum wages for individuals with handicaps. The task force would also determine data that would be important to gather regarding the effects, intended and unintended, of a new requirement to pay minimum wage or better to all employees. The task force would make recommendations as to changes in state law to require full compliance with minimum wage laws, and to policies that might minimize unintended consequences of moving to full wages for all.

The task force would report to the Legislative Health and Human Services Committee on its findings by October 1, 2017.

### **FISCAL IMPLICATIONS**

There is no appropriation. Agencies sending staff to the task force would have to cover their time and their travel expenses.

### **SIGNIFICANT ISSUES**

The United States Department of Labor (US DOL), Wage and Hour Division, under section 14(c) of the Fair Labor Standards Act, has the authority to issue certificates, commonly known as 14(c) certificates, which allow employers to pay workers with disabilities less than minimum wage. Workers are instead paid a percentage of the prevailing wage based on time studies of the quality and quantity of their work as compared to their non-disabled peers.

Nationally, until the late 1970's, most workers with disabilities were employed in settings called sheltered workshops. In that setting, workers were generally employed in light manufacturing where they were paid by the piece (i.e., piece rate work). The more these workers produced, the more they were paid. The general thinking was that if workers with disabilities could become fast enough, then they could eventually work in manufacturing settings in the community. That thinking changed when Marc Gold developed systematic instruction. Systematic instruction is a method to teach complex tasks to workers with severe disabilities. This opened the door to employment options in the community and debunked the notion that workers with disabilities required pre-employment training before they could work in the community.

New Mexico eliminated paying to employ people with developmental disabilities in sheltered workshops when changes were made to the Developmental Disabilities (DD) Waiver standards in 2007. The language of Section 50-4-23 NMSA 1978, which refers to "work activity centers," is thereby obsolete. In terms of best practices for service settings, the actions that would be enacted in HB327 and contemplated with the establishment of the task force would be consistent with DD Waiver Standards.

The Developmental Disability Supports Division (DDSD) has adopted an Employment First Policy, which "establishes procedures for supporting working-age adults to have access to valued employment opportunities as the preferred service in New Mexico. Access to competitive integrated employment will enable the person to engage in community life, control personal resources, and receive services in the community." The policy also defines Supported Employment as "competitive, integrated employment for people with severe disabilities and a demonstrated need for support to obtain and maintain employment. Supported employment occurs in typical integrated business, industry, or government environments and includes:

1. Minimum wage or better;
2. Support to obtain and maintain jobs;

3. Opportunity for career development; and
4. Workplace diversity.”

DDSD collects data from providers on a quarterly basis about the number of people who are working, hours worked, and their hourly wages. For FY17 Q2, it was reported to DDSD that 930 people were working in Supported Employment New Mexico. According to the U.S. Department of Labor, there are currently five (5) providers who hold 14(c) certificates in New Mexico, but only three of them are currently using the 14(c) certificate to pay less than minimum wage:

- ENMRSH, INC in Clovis, NM is permitted to serve 80 individuals through a 14(c) certificate. They are currently supporting no people who are making less than minimum wage.
- CARC, INC in Carlsbad, NM is permitted to serve 73 individuals through a 14(c) certificate. They are currently supporting 19 people who are making less than minimum wage.
- LifeRoots, INC in Albuquerque, NM is permitted to serve 10 individuals through a 14(c) certificate. They are currently supporting no people who are making less than minimum wage.
- Adelante Industries in Albuquerque, NM is permitted to serve 338 individuals through a 14(c) certificate. They are currently supporting 230 people who are making less than minimum wage.
- Zuni Entrepreneurial Enterprises, INC in Gallup, NM is permitted to serve 19 individuals through a 14(c) certificate. They are currently supporting 16 people who are making less than minimum wage.

In total, 265 people are currently served by the 14(c) certificate in New Mexico. A transition plan would need to be developed to have employers pay these workers minimum wage or these workers would need assistance with new jobs that pay minimum wage.

New Hampshire and Maryland have passed bills which no longer permit the use of 14(c) certificates in their states. The United States Department of Labor/Wage and Hour Division recently issued guidance to states on the use of 14(c) certificates.

The proposed task force would have to decide between two countervailing factors: 1) that elimination of subminimum wages for people with disabilities would eliminate many job opportunities currently available to them, and 2) a few agencies’ ability to pay less than minimum wage unfairly advantages them in competition with other agencies and industries who could perform the same functions with workers paid at least the minimum wage.

**RELATIONSHIP** to House Bill 327, which would abolish the subminimum wage for persons with disabilities.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

There would be no study done to determine the appropriateness and feasibility of eliminating the subminimum wage for persons with disabilities.